

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

TONY FOUNTAIN, )  
 )  
 Plaintiff, ) CIVIL ACTION NO.  
 )  
 v. ) 2:06cv548-MHT  
 )  
 DR. PEASANT, et al., )  
 )  
 Defendants. )

ORDER

Before the court is the plaintiff's motion that the order of the magistrate judge entered August 2, 2006, requiring that he pay the \$ 350.00 filing fee, be voided and that he be reimbursed that sum, or, alternatively, that enforcement of the order be clarified. In support of his motion that the August 2 order be voided, the plaintiff maintains that the magistrate judge had no authority to either grant or deny his motion for leave to proceed in forma pauperis. Specifically, the plaintiff argues that the magistrate judge could not undertake any

action on his request for pauper status without consent of the parties, and that the district judge referred the case to the magistrate judge for the sole purpose of issuing a report and recommendation.

Because the August 2 order was entered by the magistrate judge pursuant to 28 U.S.C. § 636(a)-(b), consent of the parties to its entry was unnecessary. Thus, the plaintiff's motion to void the August 2 order will be denied. The alternative motion for clarification of the August 2 order will be granted for the reasons stated herein. Finally, to the extent the plaintiff's initial motion may be construed as an objection to the magistrate judge's August 2 order, it is untimely as well as meritless. See Fed.R.Civ.P. 72(a).

Accordingly, it is ORDERED that:

1. The plaintiff's motion to void order (Doc. No. 53) is denied;

2. The plaintiff's alternative motion to clarify (Doc. No. 53) is granted for the reasons stated herein; and

3. The plaintiff's initial motion (Doc. No. 53) is construed as an objection to the August 2, 2006, order (Doc. No. 17), and the objection is overruled as untimely under Fed.R.Civ.P. 72(a).

DONE, this the 29th day of May, 2007.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE